

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11577 of 1994

Date of decision: 10-9-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOTIBHAI P BHAGAT

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR HASHIM QURESHI for Petitioner

MR M. R. Prajapati for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/97

ORAL JUDGEMENT

This writ petition is filed by minor Robinson Motibhai Bhagat through his father and natural guardian Motibhai P. Bhagat, and prayer has been made for issuance of directions to the respondents to investigate the matter of giving him lesser marks than what he expected in the subject of English in the SSC examination in which he appeared in the year 1994. The result of the said examination was declared on 5th June, 1994, and the petitioner was declared failed therein. The petitioner stated that he has secured good marks in all the subjects except English in which the Board has given him only 18 marks. Application has been made to the respondent Board to the effect that the marks awarded by the Board to him in English paper are not in consonance with the expectation of the examinee. Request has been made for rechecking of the answer book of English. This application of the petitioner was stated to be not replied by the Board. On approaching the concerned school by the petitioner, the school has also written to the respondent Board that the petitioner is a bright student of the school and the Board would have committed mistake by showing lesser marks in the mark sheet pertaining to the subject of English. The Board has, after rechecking all the answer books of the petitioner of English subject, under its letter dated 23rd September, 1994 informed him that the marks as shown in the mark sheet is the correct marks, secured by the petitioner in English paper.

2. Taking into consideration the observation of the school as contained in the letter dated 4-2-1995, the counsel for the petitioner contended that the answer book of the petitioner was misplaced by the respondent Board and as such exemplary cost has to be awarded. This is the only submission made by the counsel for the petitioner. On the other hand the counsel for the respondent contended that the 18 marks have been given to the petitioner as per the examiner. It is not the case where 18 marks were given to the petitioner without examining the answer book of the English paper. The answer books of the petitioner were available to the examiner as well as the moderators, and there is no error in awarding the marks and consequently question of awarding exemplary cost in this case to the petitioner.

3. Though the petitioner's counsel may take liberty to make any submission but only submissions which are raised in the special civil application are available to

him to raise during the course of his arguments. The counsel for the petitioner cannot make any submission which does not find place in the special civil application. After going through the special civil application I find that the petitioner firstly made grievance that he applied for rechecking of his answer book of English subject and that application has not been replied. But this grievance of the petitioner is not well founded, as in the writ petition itself the petitioner has admitted that the Board vide its reply dated 23-9-1994 intimated to the petitioner that there is no change in the marks secured by him in the English subject.

4. The next grievance of the petitioner is that though another candidate has been given reply to his application for rechecking of the answer book within a short period, reply to his application has been given after considerable delay. On the basis of this averment what the petitioner further stated is that he apprehended that he may not get the expected marks in the subject of English, otherwise if the stand of the Board is genuine, the Board should have replied to his application within reasonable time. I fail to see what really the petitioner wants to convey to the Court by making these statements. Next the petitioner stated that the marks which are shown in his mark sheet against the subject of English are not proper and hence the petitioner approached this Court to direct the respondents to check the said paper, total number of marks, marks given in each and every answer and the grand total. From the reading of the writ petition as a whole, I do not find any averment therein that the answer book of the petitioner was not available or it has been misplaced. The respondents filed affidavits which are on the record of the special civil application. First is the affidavit of the person who has been appointed as Moderator in the subject of English by the Board for the examination held in March, 1994. He has made a categorical statement on oath that he prepared the Moderator's book containing particularly page No.52797189. He further made statement that he has personally seen the answer book of the petitioner bearing No.B-002700, and on the front page of the main answer book total marks were indicated and the candidate had obtained 18 marks in the subject of English, and he had posted entry in the Moderator Book in his own handwriting. He further stated that it is also the practice to underline the marks in red ink, where the candidate has obtained less marks than passing marks. Red line is marked by him in the case of the petitioner. Xerox copy of Moderator's report has been produced,

wherefrom I find that the petitioner is given 18 marks. By this special civil application what the petitioner prays is that his answer book of the English paper may be called for, for revaluation, which prayer cannot be granted merely on asking.

5. Assistant Secretary of the Board has also filed his affidavit and he has nowhere stated that the answer book of the petitioner was misplaced or it was not available. He made categorical statement that the original answer book and supplementaries of the petitioner as far as English subject is concerned was available with the Board. After taking into consideration the affidavit of the respondent as well as the affidavit of the petitioner I do not find anything on record that the answer book of the petitioner was misplaced. It is not the grievance of the petitioner in the special civil application also. His only grievance was that he was expecting more marks, whereas in the English paper marks were not given as per his expectation. If only as what the candidate who appeared in the examination, expected his marks therein, is to be taken basis for examining the correctness of the examination system, then it will create a chaos and will mar the complete system. The petitioner was awarded 18 marks in English paper and I do not find any error therein. This special civil application is wholly misconceived, and it is dismissed with costs, which is assessed at Rs.50/-. The counsel for the respondents states that it is the amount which has been paid to and received by them as professional fees in this case. Rule discharged.

.....

csm